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June 27, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 3, 2007

Case Number: TSO-0482

This Decision concerns the eligibility of xxxxxxxxx (hereinafter "the individual") for an access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be granted. For the reasons detailed below, it is my decision that the individual's access authorization should be granted.

I. BACKGROUND

On January 5, 2007, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization" (hereinafter referred to as the "information statement"). The information statement indicates that the individual, who is currently 29 years old, was arrested on three occasions for Driving While Intoxicated (DUI): February 2006; June 1997; and November 1996. The notification letter also indicates that in March 2000 the individual was cited for public urination after consuming alcohol, and in April 1999 he was charged with procurement of alcohol for a minor.

On November 1, 2006 the individual was evaluated by a DOE consulting psychiatrist. In her November 9 report the DOE consulting psychiatrist determined that the individual met the criteria for Alcohol Abuse.

The information statement indicates that the DOE consulting psychologist's diagnosis of alcohol abuse raises a security concern under Criteria J and H. 10 C.F.R. §710.8(j) & (h). The notification letter informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

The individual's attorney indicated that his client agrees with the DOE consulting psychiatrist's diagnosis and the facts specified in her report. Transcript of Hearing (Tr.) at 14. The individual believes that the hearing testimony demonstrated that he has been abstinent since February 10, 2006. The individual believes his 15 month period of abstinence, change in lifestyle, attendance at Alcoholics Anonymous (AA),

participation in an outpatient treatment program and commitment not to consume any alcohol in the future indicate that he is rehabilitated. Below is a summary of the testimony at the hearing.

II. HEARING TESTIMONY

A. The DOE Consulting Psychologist

The DOE consulting psychologist was the first witness at the hearing. She testified that in November 2006 she diagnosed the individual with Alcohol Abuse. Transcript of Hearing (Tr.) at 11. She testified that "... at the time of the evaluation, [the individual] had already started a good effort to rehabilitate himself, but I just did not consider it was enough [period of abstinence] at the time of my evaluation." Tr. at 12. She testified that at the time of her evaluation she recommended that the individual maintain his abstinence and enroll in an alcohol counseling program and/or AA. Tr. at 13.

B. The Individual

The individual testified that he last consumed alcohol on February 9, 2006. Tr. at 16. The individual testified that he has made "an oath to my family and my friends to remain abstinent for the rest of my life." Tr. at 26. He testified "I don't plan on ever going back to consumption of alcohol in the future." Tr. at 119.

The individual testified about his attendance at treatment programs. He testified that he was involved in an outpatient treatment program for five weeks during February and March 2007. However, he did not complete that program because he was dismissed for poor attendance. Tr. at 18. He testified that the poor attendance was a result of his need to take care of his son. He indicated that he works during the day and his girl friend starts work at 5 p.m. Therefore, he is responsible for child care in the evening. He had difficulty finding child care and therefore missed a number of meetings. Tr. at 18 and 31. For the four weeks prior to the hearing, he has been attending a second outpatient counseling program. This eight week program meets three days a week for three hours. Tr. at 17. The individual testified that he has been successful at obtaining child care for his son and therefore has not missed any of the meetings of the second counseling program. The individual submitted a letter from the second program's counselor stating the individual has attended all counseling sessions. Individual's Exhibit A.

The individual also testified that he is participating in AA. Tr. at 22. He testified that he attends two or three meeting per week. Tr. at 22. He testified that he has a sponsor whom he talks to "almost nightly." Tr. at 23. The individual submitted his AA attendance sheets showing that he started attending AA in May 2006 and that he has attended 70 AA meetings. Individual's Exhibit B. The individual testified that he is currently working the AA steps and is on step 4. Tr. at 110 and 118. He testified that he plans to continue to attend AA meetings.

C. The Individual's Family

1. The Individual's Girl Friend

The individual girl friend testified that she is 26 years old and that she met the individual in July 2000. Tr. at 150. Soon after they met, the individual moved into her apartment. Tr. at 153. They had a child together in 2002. Tr. at 154. They have lived together for the entire period and have plans for the future. She testified that they are a committed family. Tr. at 169.

She testified about the individual's use of alcohol. She stated that prior to February 2006, the individual would drink regularly and sometimes he became severely intoxicated. Tr. at 156. However, after the February 2006 DUI the individual stopped drinking completely and has not consumed any alcohol since that time. Tr. at 157. She testified that during the last year she has occasionally consumed alcohol. However, there is no alcohol in their home. She testified that because her brother is an alcoholic, she is familiar with problems caused by alcohol. Tr. at 151. She and the individual talk about the individual's abstinence. The individual tells her about his AA meetings and has encouraged her to stop her occasional consumption of alcohol. Tr. at 158. She testified that she has asked the individual if he misses alcohol consumption. He has told her that that he does not miss alcohol consumption. Tr. at 158.

The individual's girl friend testified about the child care problems that caused the individual's absences from his first counseling program. She testified that the individual has arranged for his brother to live with them so that his brother is available to take care of the child during the evening hours while she works and while the individual is attending AA meetings and his counseling program. Tr. at 151-153. She testified that the individual believes AA and that his counseling program are helping him "make things better." Tr. at 163.

She concluded by testifying that she does not believe the individual will consume alcohol in the future because "he really has goals with our family, his job. We want to get a house, get a new car. I want a new baby. So I know he's not going to drink again." Tr. at 169.

2. The Individual's Second Cousin

The individual's second cousin testified that the individual is the same age as her children. When he was young, he was at her home on a daily basis and stayed at her home for extended periods when he was a child. Tr. at 45.

When the individual was arrested in February 2006, he called her to pick him up from the detention center. Tr. at 46. She is aware of the individual's problems with alcohol. She testified that when the individual first told his family that he was committed to abstinence she believed that he would soon return to consuming alcohol. Tr. at 50. She testified that since February 2006, she has been at 10 or more family functions at which alcohol was served. Tr. at 49. He has not consumed alcohol at any of the events. Tr. at 47. Over the last 15 months she has seen the individual demonstrate the ability to remain abstinent. She now believes he will continue his abstinence. Tr. at 51.

3. The Individual's Father

The Individual's father testified that he was divorced in 1990 and that he was given custody of his four children. Tr. at 124. He testified that in order to take proper care of his children he gave up alcohol in 1991. Tr. at 124. He testified that prior to February 2006, he recognized that his son had a problem with alcohol. He tried unsuccessfully on a number of occasions to convince his son to stop consuming alcohol. He testified that his son is now accepting his responsibilities as a father and that he has seen a "complete change in him since [February 2006]." Tr. at 126. He stated that "I'm really glad for him. You know, I hope for the rest of his life he never ever drinks again." Tr. at 125.

He further testified that since February 2006 the individual and his girlfriend have become "closer and they are spending, you know, more time doing things, like going to the show or, you know, going out and taking the little boy to the zoo and activities that that, more of a family type activities." Tr. at 144.

D. The Individual's Friends

The first friend testified that he has known the individual for seven years. He currently sees the individual twice a week when they play softball. Tr. at 60. He testified that he used to drink alcohol with the individual. Tr. at 60. About a week after his February 2006 DUI, the individual told him about the incident. Tr. at 61. He testified that since that time the individual's behavior has changed and he has stopped consuming alcohol. "So you know, more time with the family, less time with buddies. I guess those sorts of changes is what I'm getting at." Tr. at 62. He testified that initially he tried to get the individual to have a beer. Tr. at 63. The individual turned down his suggestions. Since February 2006 he has witnessed 30 occasions where alcohol was served and where the individual did not consume any alcohol. Tr. at 69.

The first friend testified concluded by testifying that the individual is "taking responsibility for [his problem]." Tr. at 68. "He's carrying that burden . . . he actively thinks about his life, and in the context of his family and his future and not just himself." Tr. at 68. He believes the individual will "move forward and can't be backpedaling and kind of backsliding through life." Tr. at 68.

The second friend testified that he has known the individual for three years. Tr. at 72. They work together and he also plays softball with the individual. Tr. at 73. He noticed in March 2006 that the individual was no longer consuming alcohol at their soft ball games. Tr. at 74. It was clear to him that the individual "has come to the realization that he needs to stop, yes." Tr. at 79.

E. The Individual's Co-workers

The first co-worker testified that he was the individual's trainer when he arrived at the site about four years before the hearing. He also played on the individual's softball team. The team plays twice a week for four months in the spring. Tr. at 57. Prior to 2006, he saw the individual consume alcohol at the games. Since February 2006, he has not seen the individual consume alcohol.

The second co-worker testified that approximately five years ago, when the individual was graduating from a local junior college, he helped recruit him to work at the DOE. Tr. at 91. He sees him twice a week at the work site and believes that the individual is reliable. Tr. at 94.

The third co-worker testified that he has known the individual for two years. During that period, he usually sees the individual daily. Tr. at 99. He testified that the individual is a good worker. Tr. at 101.

F. The DOE Consulting Psychiatrist.

After hearing the testimony, the DOE consulting psychiatrist testified for a second time. She cited with approval the individual's 15 month abstinence. She also testified about two other factors showing that the individual has taken meaningful steps towards rehabilitation. She stated that since the November 6, 2006 evaluation the individual more clearly recognizes that if he returns to consuming alcohol he will have alcohol related problems. She pointed to the individual's statement that he admits at AA meetings that he is an alcoholic and the testimony that he has tried to get his father to attend AA to support her conclusion that the individual now recognizes that he can not consume alcohol in the future. Tr. at 177 and 180. Second, she noted that the individual has strong family support for his abstinence. She testified that his father understands that the individual has alcohol problems and the individual's girl friend is also starting to recognize that the individual will need help to maintain his abstinence. Tr. at 178.

She concluded her testimony by stating that "I think with all the new information considered in this hearing that the probability of [the individual] relapsing in the immediate foreseeable future is relatively low." Tr. at 183.

III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

IV. ANALYSIS

The question before me is whether the individual's period of abstinence and his rehabilitation efforts are sufficient to mitigate the security concern related to the diagnosis of alcohol abuse. I recognize that there are a few weaknesses to his showing. First, the individual's understanding of his alcohol problem is relatively unsophisticated. Second, his girl friend is only starting to understand that the individual needs strong support to maintain his abstinence.

Nevertheless, I am convinced that this individual meets the DOE standard for rehabilitation. The testimony at the hearing of the individual, his friends and family convinced me and the consulting psychiatrist that the individual has been abstinent since February 10, 2006. Therefore, on the date of the hearing the individual had been abstinent for slightly over 15 months. Furthermore, the individual has attended seventy AA meetings and, as of the date of the hearing, has almost completed an intensive outpatient treatment program. I believe that the individual has a strong commitment to abstinence and he has the model of his father, who has maintained his abstinence since 1991 without a sophisticated understanding of his alcohol problem. Therefore, I agree with the DOE consulting psychiatrist that the individual's 15 months of abstinence, his commitment to future abstinence and continued participation in AA indicate that the risk that the individual will relapse is relatively low. Accordingly, I find that the individual has adequately mitigated the DOE's Criteria J and H security concerns.

V. CONCLUSION

I have concluded that the individual has mitigated the DOE security concern under Criteria J and H of 10 C.F.R. §710.8. In view of the record before me, I am persuaded that granting the individual access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wiekert
Hearing Officer
Office of Hearings and Appeals

Date: June 27, 2007